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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,094	09/03/2003	Thomas E. Creamer	BOC9-2003-0001 (370)	4899
40987 7590 03/23/2007 AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER WILSER, MICHAEL P				
ART UNIT			PAPER NUMBER	
2109				

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/654,094

**Applicant(s)**

CREAMER ET AL.

**Examiner**

Michael Wilser

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/21/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to the original filing of September 3, 2003. Claims 1-28 are pending and have been considered below.

#### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 275 in Figure 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities: the examiner notes the use of acronyms (e.g. HTTP, DBMS, etc.) throughout the specification without first including a description in plain text, as required.

3. On page 13 of the specification the applicant uses the reference character 235 for local components in paragraph 39, line 7 and reference character 240 for external components on page 14, line 1. However, the applicant then uses reference character 240 for local components in paragraph 41, line 1 and 235 for external components in paragraph 41, line 3. This nomenclature continues throughout the remainder of paragraph 41 and paragraph 42. The examiner is interpreting this as meaning to be reference character 235 for local components and 240 for external components for purposes of examination as first described in paragraph 39 on pages 13 and 14 of the specification.

Appropriate correction is required.

***Claim Objections***

4. Claim 18 is objected to because of the following informalities: Line 1 of Claim 18 reads "A system for serving applications comprising the steps of". This is an improper system claim since a system is not comprised of steps. For purposes of examination the examiner is interpreting this as being meant to say "A system for serving applications comprising". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 6, 8, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 6 recites the limitation "said application server" in line 3. There is insufficient antecedent basis for this limitation in the claim. There is no application server in any of the claims stemming from independent Claim 1. For purpose of examination the examiner is interpreting this as being the server that is producing the plurality of responses from the clients request.

8. Claim 8 recites the limitation "said component usage messages" in lines 2 and 3 and "said application server" in line 4. There is insufficient antecedent basis for this limitation in the claim. There is no application server in any of the claims stemming from independent Claim 1. There is a component usage message in Claim 4 but Claim 8 does not stem from Claim 4 it stems from Claim 3 which comes from Claim 1. For purpose of examination the examiner is interpreting the application server as being the server that is producing the plurality of responses from the clients request and the component usage message as being generated by the local components of Claim 3.

9. Claim 26 recites the limitation "said component usage messages" in 3 and 4 and "said application server" in line 5. There is insufficient antecedent basis for this limitation in the claim. There is an application server in Claim 23 but Claim 26 does not

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stem from Claim 23 it stems from Claim 21 which comes from Claim 19. There is a component usage message in Claim 22 but Claim 26 does not stem from Claim 22 it stems from Claim 21 which comes from Claim 19. For purpose of examination the examiner is interpreting the application server as being the server that is producing the plurality of responses from the clients request and the component usage message as being generated by the local components of Claim 21.

10. Examiner's Note. The Applicant appears to be attempting to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph in Claim 18 by using "means-plus-function" language. However, the Examiner notes that the only "means" for performing these cited functions in the specification appears to be computer program modules. While the claims pass the first test of the three-prong test used to determine invocation of paragraph 6, since no other specific structural limitations are disclosed in the specification, the claims do not meet the other tests of the three-prong test. Therefore, 35 U.S.C. 112 6<sup>th</sup> paragraph has not been invoked when considering these claims below.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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12. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Slater et al. (US 2004/0010588).

Claims 1, 18, and 19: Slater discloses a method, system, and computer readable medium for serving applications (page 1, paragraph 2) comprising:

- a. receiving component status information (page 1, paragraph 5);
- b. component status information specifying a usage level for an application component (page 1, paragraph 5);
- c. acquiring a client request (page 1, paragraph 5);
- d. selecting a server response for client request from among a plurality of server responses based on component status information (page 1, paragraph 5);
- e. each possible server response utilizes different application components (page 1, paragraph 5); and
- f. responding to client request with selected server response (page 1, paragraph 5).

Claims 2 and 20: Slater discloses a method and computer readable medium as in Claims 1 and 19 above, and further discloses of registering each application component with a central location that distributes component status information (page 2, paragraph 20).

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Claims 3 and 21: Slater disclose a method and computer readable medium as in Claims 1 and 19 above and further discloses that the application components comprise local and external components (page 3, paragraph 27) and further comprising:

- a. server response can be provided by using either local or external components (page 3, paragraph 27);
- b. comparing usage level of external components with usage threshold (page 3, paragraph 26); and
- c. if usage threshold is exceeded, using the local component to provide server response, otherwise use external component (page 3, paragraph 26).

Claim 11: Slater discloses a system for serving applications (page 1, paragraph 2) comprising:

- a. an application server (page 1, paragraph 6) configured to receive client requests (page 1, paragraph 5) and provide server responses to client requests (page 1, paragraph 5);
- b. a status hub (server) (page 1, paragraph 5) configured to receive component usage messages from linked application component (page 1, paragraph 5); and
- c. distribute component status information to application server wherein information includes usage level for associated application component (page 1, paragraph 5).

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Claims 4, 13, and 22: Slater discloses a method, system, and computer readable medium as in Claims 1, 11, and 19 above, and further discloses of transmitting component usage information from application component to central location that distributes component status information (page 4, paragraphs 42-46).

Claim 5: Slater discloses a method as in Claim 4 above, and further discloses of:

- a. specifying a usage message format (page 16, paragraph 295 & page 23, paragraph 380); and
- b. formatting component usage information in accordance with usage message format (page 27, paragraphs 425 and 426).

Claim 23: Slater disclose a computer readable medium as in Claim 19 above, and further discloses of conveying client request from a client browser through a server to an application server (page 1, paragraph 4).

Claims 6 and 24: Slater discloses a method and computer readable medium as in Claims 5 and 23 above, and further discloses of:

- a. conveying client request and component status information to a control layer (page 15, paragraph 276);
- b. calling from control layer a method in the application layer (page 15, paragraph 276); and

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c. activating one application component responsive to the calling (page 30, paragraph 468).

Claims 7 and 25: Slater discloses a method and computer readable medium as in

Claims 1 and 19 above, and further discloses of:

a. identifying plurality of server responses for client requests (page 9, paragraph 123);

b. for server response, determining a utilization for components that generate server response (page 3, paragraph 26);

c. comparing required utilization with available component capacity, wherein capacity is determined in part by component status information (page 16, paragraph 289); and

d. selecting server response based upon comparing (page 4, paragraph 56).

Claims 8 and 26: Slater discloses a method and computer readable medium as in

Claims 3 and 21 above, and further discloses of:

a. determining an overload condition based upon component usage messages (page 4, paragraph 43-45); and

b. responding to overload condition by adjusting from steady-state to an overload-state (page 4, paragraph 43-45).

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Claims 9 and 27: Slater discloses a method and computer readable medium as in Claims 8 and 26 above, and further discloses of limiting usage of components that triggered the overload condition (page 4, paragraph 43-45).

Claims 10 and 28: Slater discloses a method and computer readable medium as in Claims 8 and 26 above, and further discloses of:

- a. determining an end of the overload condition based upon component usage messages (page 4, paragraph 46); and
- b. adjusting the server from overload-state to steady-state (page 4 paragraph 46).

Claim 12: Slater discloses a system as in Claim 11 above, and further discloses of the usage level indicating an overload state (page 4, paragraph 43-45).

Claim 14: Slater discloses a system as in Claim 11 above, and further discloses of the application server is a multilayered server configured to provide different responses to client requests (page 1, paragraph 5) based on component status information (page 1, paragraph 5).

Claim 15: Slater discloses a system as in Claim 14 above, and further discloses that the application layer contains a plurality of data methods which utilize application components (page 15, paragraph 276).

Claim 16: Slater discloses of a system as in Claim 14 above, and further discloses that the interface layer is configured to generate and format documents containing server responses (page 15, paragraph 276).

Claim 17: Slater discloses a system as in Claim 14 above, and further discloses that the control layer is configured to orchestrate behavior of application layer and interface layer based on component status information (page 15, paragraph 276).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


- a. Benash et al. (US 6,084,892) Public IP Transport Network.
- b. Bell et al. (US 5,951,650) Session Traffic Splitting Using Virtual Internet Protocol Addresses Associated With Distinct Categories of Application Programs Irrespective of Destination IP Address.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Wilser whose telephone number is (571) 270-1689. The examiner can normally be reached on Mon-Fri 7:30-5:00 EST (Alt Fridays Off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on (571) 270-1065. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
MPW  
March 16, 2007

  
James Myhre  
Supervisory Patent Examiner